

Before the
Federal Communications Commission
Washington, D.C. 20554

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

In the Matter of)
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Price Cap Performance Review for)
Local Exchange Carriers)
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CC Docket No. 94-1

Reply Comments of BroadBand Technologies, Inc.

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Summary. BroadBand Technologies, Inc. ("BroadBand Technologies") hereby files these reply comments on the Notice of Proposed Rulemaking in the above captioned proceeding (the "Notice"). BroadBand Technologies supports the Commission's initial decision to implement a price cap regulatory structure in order to provide an incentive-based mechanism for controlling rates while simultaneously promoting local exchange carrier ("LEC") investment in the U.S. information infrastructure.^{1/} BroadBand Technologies also supports the Commission's current initiative to revise price caps to provide the necessary incentives for the LECs to continue to invest in and accelerate the development of an advanced broadband interactive National Information Infrastructure.

^{1/} See Policy and Rules Concerning Rates for Dominant Carriers, CC Docket No. 87-313, 5 FCC Rcd. 6786 (1990).

Background. BroadBand Technologies is a start-up high technology company, located in Research Triangle Park, North Carolina. BroadBand Technologies was founded in 1988 with the goal of building a world class company that would help transform the nation's copper-based local telecommunications network into an advanced interactive superhighway that would bring the power of switched broadband digital networking to all Americans. BroadBand Technologies shares this vision with the Clinton Administration, and believes that the Commission's rulemaking proceeding should reflect the goal of infrastructure development. As Vice President Gore has noted, regulation has an important role in establishing preconditions for the investment necessary to create the broadband interactive services of the future:

How can government ensure that the information marketplace emerging on the other side of the Big Crunch will permit everyone to be able to compete with everyone else for the opportunity to provide any service to all willing customers? How can we ensure that this new marketplace reaches the entire nation? How can we ensure that it fulfills the enormous promise of education, economic growth and job creation? . . . That requires a flexible, adaptable regulatory regime that encourages the widespread provision of broadband, interactive digital services.^{2/}

Specifically, BroadBand Technologies supplies the electronics hardware and software that switches and transmits voice, data and video services over fiber optic lines to the curb -- the technology most capable of bringing broadband, fully interactive services to every home at an affordable rate. When BroadBand Technologies began, conventional wisdom was that such technology would be affordable only to large corporations and institutions. In addition, most experts agreed that the technology would not become available until the second half of the

^{2/} Remarks of Vice President Gore, Superhighway Summit, Academy of Television Arts and Sciences, Los Angeles, CA (January 11, 1994) [*emphasis added*].

1990's. BroadBand Technologies demonstrated that such technology could be made affordable, and introduced it in trials in July, 1991, only three years after the company's inception.

Since its initial deployment, BroadBand Technologies' technology has been marginally more expensive than other fiber-coax-based ("hybrid") technologies that can only provide broadcast video and very finite interactivity, such as limited movies-on-demand. Such approaches, while slightly less expensive than the BroadBand Technologies system, do not have the bandwidth to support a high penetration of interactive services or a diversity of service providers. BroadBand Technologies' Fiber Loop Access (FLX) system is presently able to deliver many more interactive services than fiber-coax approaches while providing equal access for service providers. Such services as on-demand entertainment, distance learning, telemedicine, telecommuting, emergency care, and other related educational and health care services that the Clinton Administration, Congress and this Commission have identified as features of the National Information Infrastructure, can all be supported by BroadBand Technologies' system.^{3/} In fact, BroadBand Technologies' FLX system becomes more cost effective than hybrid network architectures as the number of customers demanding fully interactive services increases or as the number and diversity of services delivered increases.

Regulatory Hurdles to Network Investment. BroadBand Technologies views overly rigid regulations imposed on LECs as one of the highest hurdles to overcome in developing a broadband interactive superhighway that will bring the benefits of the Information Age to all

^{3/} See The National Information Infrastructure: Agenda for Action, Information Infrastructure Task Force (September 15, 1993), and Notice, ¶ 3-5.

Americans. Such regulations suppress telephone company willingness and ability to invest efficiently in technologies that would enable them to develop and offer new broadband interactive services. The current regulatory structure, including restrictions on LEC activities, time-consuming tariff reviews and asymmetric pricing flexibility, severely curtails the ability of the LECs to recoup their investments.

This regulatory environment only exacerbates the uncertainty of the increasingly competitive business environment for LECs, and further delays the marketplace roll-out of efficient and advanced technology, such as BroadBand Technologies' FLX system. Rapidly evolving technology, volatile capital markets, and the prospect of competition from numerous domestic and international providers are all normal business risks that participants in the communications industry face. BroadBand Technologies believes that the Commission should act strongly to avoid unnecessarily subjecting LECs to regulatory burdens not borne by their competitors.

BroadBand Technologies requests that, in this proceeding and in the months to come, the Commission create a blueprint that provides incentives for LECs to invest in a broadband interactive network of the future. In doing so, the Commission will help prevent short-sighted investment decisions, which even now are resulting in network technology investments in short-term solutions, such as conventional one-way video services, that will not provide universal broadband interactive services.

Price Cap Revision. Price cap revision is an important initial part of the regulatory blueprint for the development of the National Information Infrastructure. By providing a more flexible regulatory environment for LECs, the Commission will be able to provide long-term benefits to ratepayers, while stimulating efficient investment in the networks of the future. In its price cap review, the Commission should seek to:

- Streamline the regulatory process and sharpen the incentives for telephone companies to provide new services.
- Provide regulatory symmetry and flexibility to enable all telephone companies to respond to the service and pricing needs of customers.
- Eliminate or revise the rules on earnings restrictions to provide incentives for companies to invest in their networks and provide advanced, broadband, interactive services to all Americans.

To amplify, streamlining the current regulatory process while sharpening telephone company incentives to invest in their networks will reduce the hurdles LECs face when they seek to offer new services. In this rapidly growing and changing industry, where new technologies can be introduced, marketed and then replaced at dizzying speeds, regulatory barriers, such as lengthy tariff reviews, restrictions on LEC activities, and administrative delay, block new service deployment by the LECs. The Commission should use this docket to remove roadblocks hindering the development of the National Information Infrastructure. With further regulatory reform, the LECs will be positioned to compete fairly in delivering the broadband interactive services of the future to the greatest number of Americans and in the shortest time.

Regulatory symmetry and parity is another area in which the Commission can accelerate the development and deployment of a competitive and affordable National Information Infrastructure. By limiting the ability of LECs (but not their competitors) to respond quickly to customer needs, both in terms of new service offerings and pricing, asymmetric regulation precludes effective competition among service providers, to the disadvantage of consumers. Enabling the LECs to compete against other service providers on a more even footing will permit market forces to increase the number of new services offered, while bringing prices down for all ratepayers.

Finally, BroadBand Technologies recommends that the Commission revise the existing sharing mechanism within its price cap regime to provide incentives for LECs to invest further in their networks and accelerate the development of an advanced broadband interactive National Information Infrastructure. Currently, the Commission requires LECs to base price changes on changes in an external inflation index, reduced by a productivity factor. The LEC price cap rules also set certain rate of return thresholds above which LECs must "share" revenues with their interexchange customers and with ratepayers, as opposed to encouraging LECs to reinvest revenues in their networks.^{4/}

Several states, including California, Michigan, Tennessee and most recently, Wisconsin, have used their LEC regulatory structures to stimulate LEC infrastructure investment.^{5/} While

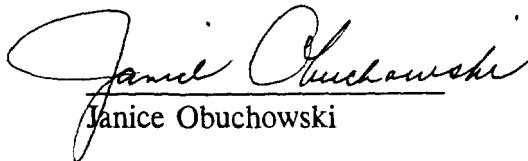
^{4/} See Notice ¶ 12, 17.

^{5/} See *Alternative Regulatory Frameworks for Local Exchange Carriers*, 107 PUR4th 1, 104 (1989), *Michigan Bell Tel. Co.*, 111 PUR4th 1, 21-23 (1990), *Telecommunications Reports*, August 6, 1990, at 12-14, and *Communications Daily*, June 27, 1994 at 7.

using various types of price cap ceilings and some limits on earnings, these states have also implemented mechanisms in which LECs whose revenues have surpassed a rate-of-return threshold are required to invest revenues in their networks. By implementing similar revisions to the current LEC regulatory structure, the Commission will be better able to protect ratepayers while providing incentives for telephone companies to build an advanced broadband interactive National Information Infrastructure.

Recommendations. BroadBand Technologies recommends that the Commission create a blueprint that provides incentives for LECs to invest efficiently in the development of a broadband interactive National Information Infrastructure. An important initial part of this blueprint should be revision of the Commission's price cap structure. By removing overly rigid and time-consuming regulations imposed on LECs, and by encouraging LECs to invest in their infrastructure, the Commission can hasten the development of the advanced broadband interactive networks of the future.

Respectfully submitted,



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